



CITY OF KILLEEN
OFFICE OF THE CITY ATTORNEY

August 12, 2019

Samuel Sinyangwe
c/o Muckrock News
DEPT MR 77197
411A Highland Avenue
Somerville, MA 02144-2516

Request for Information #: W029356

Dear Mr. Sinyangwe:

The city is in receipt of your written request submitted to the Killeen Police Department asking for eight (8) categories of police information. The city believes that the policy is protected by the law enforcement exception to the Public Information Act, found in Government Code section 552.108, law enforcement; and section 552.101, common-law privacy, in conjunction with Chapter 143 of the Local Government Code & section 58.007 of the Family Code. We are only releasing those documents which are not subject to the request for ruling from the Office of the Attorney General.

I have asked the Texas Attorney General for a ruling on whether the documents must be disclosed. You also have an opportunity to submit comments to the Attorney General as to why you believe the information should be released. See section 552.304 of the Government Code or contact the Attorney General's office for more information. Enclosed, you will find a copy of our request to the Attorney General, excluding the attachments at issue.

If you have any further questions regarding your open records request, you may contact me at 254/501-6342.

Sincerely,


Linda Pemberton
Paralegal

Attachment



CITY OF KILLEEN
OFFICE OF THE CITY ATTORNEY

August 12, 2019

Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, TX 78711-2548

RE: RELEASE OF CERTAIN INVESTIGATION FILE

Dear Sir or Madame:

Pursuant to Texas Government Code Section 552.301, this letter requests an Attorney General's opinion for a determination of whether the contents of certain policies are public information.

FACTS

On July 12, 2019, the City of Killeen Police Department received a written request from Ty Birdsong asking for eight (8) categories of police related information. A copy of the request is enclosed as **Attachment A**. We have only released those documents which are not subject to the request for ruling from the Office of the Attorney General.

On July 19, 2019, the city emailed requestor asking for clarification. A copy of the request for clarification is enclosed as **Attachment B**. On Saturday, July 20, 2019, at 3:31 p.m., requestor emailed clarification to the City of Killeen. As the city's offices were closed for the weekend, the clarification was not received by city staff until Monday, July 22, 2019 at 8:00 a.m. A copy of the clarification is enclosed as **Attachment C**.

On August 05, 2019, a letter was mailed to the Attorney General advising of the city's intent to request a ruling. A copy has been provided to the requestor and is enclosed as **Attachment D**. We have assigned this request ID # **W029356**; please provide this request number with your response. The number assigned to this request by the Office of the Attorney General is unknown.

CITY'S POSITION
Law Enforcement

The city takes the position that the information in the policies listed below is not subject to public disclosure pursuant to Public Information Act exclusions contained in Texas Government Code section 552.108.

Section 552.108(b)(1) of the Government Code excepts from disclosure the internal records and notations of law enforcement agencies and prosecutors when their release would interfere with law enforcement and crime prevention. Gov't Code § 552.108(b)(1) is intended to protect "information which, if released, would permit private citizens to anticipate weaknesses in a police department, avoid detection, jeopardize officer safety, and generally undermine police efforts to effectuate the laws of this state." *See City of Ft. Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App. – Austin 2002, no writ).

The City of Killeen seeks to withhold information in the five (5) policies below, either in whole or in part:

A302.5 - Body Armor (Effective Date: 09/20/2017):

The city specifically seeks to withhold sections .03 (c) and .03(d) of the Body Armor policy (see pg. 1).

. A copy of the policy is enclosed as **Attachment F**.

A303.8 – Firearms and Tactical Firing Range (Effective Date: 10/22/2012):

The city specifically seeks to withhold sections .02 (F)(1); .03(b) and .05(a) of the Firearms and Tactical Firing Range policy (see pages 2, 3 and 5 of the policy).

. A copy of the policy is enclosed as **Attachment F**.

B103.7 – Vehicle Pursuit Policy (Effective 03/24/2019):

The city seeks to withhold the Vehicle Pursuit policy in its entirety.

policy is enclosed as **Attachment F**.

. A copy of the

B312.2 – High Risk Warrants (Effective 11/07/2012):

The city seeks to withhold the High Risk Warrants policy in its entirety.

policy is enclosed as **Attachment F**.

. A copy of the

B319.1 – COBRA Vehicle Operations (Effective 01/12/2018):

The city seeks to withhold the COBRA Vehicle Operations policy in its entirety.

. A copy of the policy is enclosed as **Attachment F**.

The City of Killeen asks that the information be protected from public disclosure, either in whole or in part. **The paragraphs which outline the details of the policies will be redacted before release to the requester to prevent any release of info prior to the AG's opinion.**

Civil Service "g" file

The Killeen Police Department is a civil service department, pursuant to Chapter 143 of the Local Government Code.¹

The city argues the requested documents contained in the officers' "G" files are excepted pursuant to section 552.101, in conjunction with Local Government Code section 143.089.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 143.089 of the Local Government Code provides as follows:

- (a) The director or the director's designee shall maintain a*
- (b) personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:*

¹ Section 143.089(g) says that a requestor is to be directed to the director of civil service when a request is received for personnel records. The director of civil service for the City of Killeen is also the director of human resources. Therefore, because all records are in the possession of the City of Killeen and the city attorney's office would ultimately have to assist the civil service director in responding, the requestor has not been referred to the director of civil service so as to minimize delay.

(1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and (3) the periodic evaluation of the fire fighter or police officer by a supervisor.

(b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by Subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence.

(d) If a negative letter, memorandum, document, or other notation of negative impact is included in a fire fighter's or police officer's personnel file, the director or the director's designee shall, within 30 days+ after the date of the inclusion, notify the affected fire fighter or police officer. The fire fighter or police officer may, on or before the 15th day after the date of receipt of the notification, file a written response to the negative letter, memorandum, document, or other notation.

(e) The fire fighter or police officer is entitled, on request, to a copy of any letter, memorandum, or document placed in the person's personnel file. The municipality may charge the fire fighter or police officer a reasonable fee not to exceed actual cost for any copies provided under this subsection.

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the

director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

As stated, KPD is a department that operates under the civil service law in Chapter 143. The requested documents are contained in the department's "confidential files," organized pursuant to 143.089(g). The City believes that it cannot release these particular items pursuant to 143.089(g). The "g" file records responsive to this request are enclosed as **Attachment F**.

Prosecution Pending

The city takes the position that the remaining portion of the police report is excepted from public disclosure pursuant to section 552.108 of the Texas Government Code. Section 552.108(a)(1) provides:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime.

The Bell County District Attorney's office has advised the prosecution's cases, which are based on the incidents described in police report numbers 14-005549, 18-001845 18-002430 and 18-009626, are still open. Because prosecution is pending, releasing the contents of the reports at this time may jeopardize the prosecution's cases. The Bell County District Attorney has expressed his desire that the records not be released under 552.108 so that the prosecutor has the opportunity to review the evidence and prepare the cases before any evidence is released to the public to avoid interference with the cases. The police reports responsive to this request are enclosed as **Attachment F**.

Juvenile

The City of Killeen (hereinafter "City") takes the position that the police report is excepted from public disclosure pursuant to Government Code §552.101, in conjunction with §58.007(c) of the Family Code.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses the confidentiality provided by other statutes, including the Family Code. Section 58.007(c), relating to physical records or files of a juvenile, provide as follows:

Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records; and
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

The Family Code defines a child as a person who is ten years of age or older and under 17 years of age. Fam. Code §51.02(2)(A). The police report concerns juveniles who, at the time of the incident, were younger than seventeen (17) years old. Police report numbers 17-005062 and 18-00974 concern the conduct of juveniles that is contained in a law enforcement record maintained by the Killeen Police Department. The City therefore believes the information pertaining to the juveniles is within the scope of §58.007 and not public information.

No Charges/No Conviction

The City of Killeen takes the position that the information contained in the police reports, is not subject to public disclosure pursuant to the Public Information Act exclusion contained in Texas Government Code section 552.108(a)(2), the law enforcement exception.

Section 552.108(a) provides in part:

Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (2) it is information that deals with the detection, investigation or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication.

The police department has concluded its investigations of the incidents described in police report numbers 13-008367, 14-004022, and 17-005062 ; the police department does not anticipate filing any charges based on the report in the future. Therefore, the investigations have concluded in a result other than conviction or deferred adjudication and the incident reports should be excepted.

CONCLUSION

The city believes that the policy is protected by the law enforcement exception to the Public Information Act, found in Government Code section 552.108, law enforcement; and section 552.101, common-law privacy, in conjunction with Chapter 143 of the Local Government Code & section 58.007 of the Family Code.

DOCUMENTS

Attachment A – Copy of the request received July 12, 2019.

Attachment B – Copy of the requesting clarification emailed to requestor on July 19, 2019.

Attachment C – Requestor's clarification sent to the city by requestor and received by the city on Monday, July 22, 2019 @ 8:00 a.m.


Attachment D – Copy of letter sent to the Attorney General informing of the city's intent to request a ruling.

Attachment E – Copy of the letter sent to requestor, informing of the City's request to the AG.

Attachment F – Copies of the records to which this request for opinion applies.

We appreciate your assistance in reconciling the competing concepts at issue in this case. If you should require any further information, please feel free to contact me at 254/501-8811 or by fax at 254/501-8913.

Respectfully,


Linda Pemberton
Paralegal

Attachments

c.c. without attachments: Samuel Sinyangwe
c/o Muckrock News
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Somerville, MA 02144-2516